

EXHIBIT 11

Chapman, Allen D.

December 15, 2008

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
In Re: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE LITIGATION)
-----X MDL No. 1456
THIS DOCUMENT RELATES TO:) Master File No.
United States of America ex rel.) 01-CV-12257-PBS
Ven-A-Care of the Florida Keys,) Subcategory Case
Inc., et al. v. Dey, Inc., et al.,) No. 06-11337
Civil Action No. 05-11084-PBS) Hon. Patti B.
-----X Saris

VIDEOTAPED DEPOSITION OF: ALLEN D. CHAPMAN

December 15, 2008

PURSUANT TO AMENDED NOTICE AND SUBPOENA,
the deposition of ALLEN D. CHAPMAN was taken on
behalf of Defendant Dey, Inc., at 1701 California
Street, Silverton Room, Denver, Colorado 80202, on
December 15, 2008, at 10:06 a.m., before Tammie E.
Singer, Professional Court Reporter and Notary
Public within Colorado.

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<p style="text-align: right;">Page 26</p> <p>1 MR. ANDERSON: Objection, form. 2 Q. (BY MR. KATZ) You can answer. 3 A. Yes. 4 Q. And so that \$30 would then be charged 5 back to the drug manufacturer, and the drug 6 manufacturer would give that \$30 back to the 7 wholesaler to make the wholesaler whole, right? 8 A. That's correct. 9 Q. Is that how you understood the charge- 10 back -- 11 A. Yes. 12 Q. -- to work? 13 A. Yes. 14 Q. Okay. And you understood the concept 15 of a charge-back while you were the director of 16 purchasing from 1980 to 1990? 17 A. Yes. 18 Q. Did you understand that wholesalers 19 would purchase the drugs from the drug 20 manufacturers at something called WAC, or 21 wholesale acquisition cost? 22 A. I have heard that term, yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And that was lower than the AWP, right? 2 A. Hopefully. 3 MR. ANDERSON: Objection, form. And 4 Cliff, if he's in the middle of an answer, you've 5 got to let him finish his answer. You can't cut 6 him off while he's answering. 7 Q. (BY MR. KATZ) If you have more to say, 8 you should feel free to. 9 A. I have nothing else to talk about on 10 that. 11 Q. Okay. And you understood that AWP was 12 something that was above the actual acquisition 13 cost at that time, right? 14 A. Hopefully. 15 Q. Okay. Other than purchasing, what else 16 -- what other responsibility -- responsibilities 17 did you have from 1980 to 1990 as a director in 18 the University Hospital? 19 A. Hiring -- 20 Q. Okay. 21 A. -- planning, supervision, essentially 22 running the whole operation.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. And WAC is the invoice price from the 2 drug manufacturers to the wholesaler. Have you 3 heard that? 4 A. Yes. 5 Q. Okay. So based on your experience 6 purchasing drugs for the University Hospital, 7 University Hospital would be able to purchase 8 drugs at below WAC sometimes, right? 9 A. Depending on the contract, yes. 10 Q. Okay. And there's also something 11 called average wholesale price, or AWP, right? 12 A. Yes. 13 Q. But the University Hospital didn't 14 purchase drugs at AWP, right? 15 MR. ANDERSON: Objection, form. 16 Q. (BY MR. KATZ) Well, the University 17 Hospital had a contract -- 18 A. Right. 19 Q. -- price -- 20 A. Right. 21 Q. -- right? 22 A. Right.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. When drugs would come in, would the 2 invoices come to you? 3 A. No. 4 Q. That would be -- did you review 5 invoices for drugs at all? 6 A. Not as a normal function. 7 Q. While you were working with the 8 purchasing, had you seen invoices that had 9 contract price next to another price, like a WAC 10 or an AWP? 11 A. I don't remember. 12 Q. And while you were involved with the 13 purchasing, you became aware of -- that rebates 14 were offered in the pharmaceutical industry, 15 right? 16 A. How do you define that? 17 Q. Well, have you heard the term -- have 18 you heard of rebates in the pharmaceutical 19 industry before? 20 A. Yes, but I wanted to know your 21 definition. 22 Q. Well, there's a lot of different types</p>

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<p>1 Q. (BY MR. KATZ) Okay. And when Colorado 2 set its reimbursement rate for prescription 3 drugs, it had to set its reimbursement rate high 4 enough to ensure that enough providers 5 participated, right?</p> <p>6 MR. ANDERSON: Objection, form. 7 A. I'm sure that was one of the criteria. 8 It wasn't the only criteria.</p> <p>9 Q. (BY MR. KATZ) Okay. What were some of 10 the other criteria?</p> <p>11 A. Studies that were done within the 12 state, negotiation.</p> <p>13 Q. And when you say studies, you're 14 referring to studies regarding dispensing costs 15 and acquisition costs?</p> <p>16 A. Correct.</p> <p>17 Q. And when you say negotiations, you're 18 referring to negotiations with the pharmacy 19 community, right?</p> <p>20 MR. ANDERSON: Objection, form. 21 A. And other parties. 22 Q. (BY MR. KATZ) Well, let's start with</p>	<p>1 MR. ANDERSON: Objection, form. 2 A. I'm not sure I would use the word 3 lobby, but -- 4 Q. (BY MR. KATZ) Well, they would discuss 5 -- 6 A. They -- they would have input. 7 Q. Okay. And are you aware that the -- 8 that these pharmacy associations would lobby 9 branches of government? 10 A. I'm sure they did. 11 Q. Like they lobbied the legislature -- 12 A. Correct. 13 Q. -- and maybe the governor? 14 Did you ever -- did the governor's 15 office -- did the legislature ever discuss things 16 that they heard from the pharmacists with the 17 Medicaid agency? 18 A. I don't remember any direct 19 conversations like that with the governor. 20 Q. But you were aware that these pharmacy 21 associates were talking to the elected officials 22 of Colorado, right?</p>
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<p>1 the pharmacy community. Okay? 2 A. Okay. 3 Q. So the state would consider what the 4 pharmacy community had to say about what the 5 reimbursement rate should say, right? 6 A. That's correct. 7 Q. And the pharmacy community had advocacy 8 groups to assist them in this process, right? 9 A. That's correct. 10 Q. What are those pharmacy associations in 11 Colorado? 12 A. At the present time, the main one is 13 the Colorado Pharmacists Association. 14 Q. Okay. Any others? 15 A. I'm not sure how active -- there used 16 to be another one that I don't remember the 17 acronym for that was for the independent 18 pharmacies. 19 Q. Okay. And these pharmacy associations, 20 they would lobby the Colorado Medicaid agency 21 when reimbursement rate changes were being 22 discussed, right?</p>	<p>1 A. Yes. 2 MR. ANDERSON: Objection, form. 3 Q. (BY MR. KATZ) And that's part of the 4 process, and there's nothing wrong with that, 5 right? 6 MR. ANDERSON: Objection, form. 7 A. I don't know the -- 8 Q. (BY MR. KATZ) You didn't think there 9 was anything wrong with the pharmacy associations 10 expressing their opinion as to what the rate 11 should be, right? 12 A. I guess I'm not sure I know the 13 definition of "anything wrong." 14 Q. Well, it was allowed, right? 15 A. There were discussions -- we were open 16 to the public. 17 Q. Okay. 18 MR. GOBENA: Before you go on, can I 19 just have a standing objection to all these 20 leading questions? I don't want to make the 21 objection over and over again. But as far as I 22 can tell, it's as if you're doing the testifying</p>

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<p>1 Q. Okay. Did you understand that 2 different pharmacies purchased drugs at different 3 amounts?</p> <p>4 A. Yes.</p> <p>5 Q. And that different pharmacies had 6 different costs of dispensing?</p> <p>7 A. I'm sure they did.</p> <p>8 Q. Okay. And so when I say costs, I'm 9 referring to acquisition costs for the purchase 10 of the drug and dispensing costs. Do you 11 understand that?</p> <p>12 A. Okay.</p> <p>13 MR. ANDERSON: Objection, form.</p> <p>14 Q. (BY MR. KATZ) All right. Now, going 15 back to my question --</p> <p>16 A. Okay.</p> <p>17 Q. -- since Colorado Medicaid had to 18 ensure adequate access to care and different 19 pharmacies had different costs, Colorado Medicaid 20 had to take this into account when trying to 21 ensure adequate access to care, right?</p> <p>22 MR. ANDERSON: Objection, form.</p>	<p>1 A. HCFA approved every state plan or they 2 disapproved it, yes.</p> <p>3 Q. But Colorado Medicaid could only use 4 the reimbursement methodology that it decided on 5 if HCFA approved it, right?</p> <p>6 MR. GOBENA: Objection, form.</p> <p>7 Q. (BY MR. KATZ) Let me withdraw that. 8 Did HCFA have to -- did HCFA have to approve the 9 state plan used by Colorado?</p> <p>10 A. The state plan for Colorado was 11 approved by HCFA for reimbursement, yes.</p> <p>12 Q. Okay. And it was, but I'm asking you 13 whether or not that was a requirement.</p> <p>14 MR. ANDERSON: Objection, form.</p> <p>15 A. You submitted a state plan to HCFA. It 16 was either approved or disapproved. And then you 17 went through a process until you ended up with an 18 approved state plan. And there was a period of 19 time that you had to do that.</p> <p>20 Q. (BY MR. KATZ) Okay. But ultimately 21 the reimbursement methodology used by Colorado 22 Medicaid was in an approved state plan, right?</p>
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<p>1 A. Colorado Medicaid had to determine a 2 pricing structure that would keep the providers' 3 access there for the patients, yes.</p> <p>4 Q. (BY MR. KATZ) Right. And so to keep 5 providers, it would have to keep those providers 6 with the higher costs as well as the providers 7 with the lower costs, right?</p> <p>8 A. You have to have a mixture, yes.</p> <p>9 Q. Okay. Let's talk about how the 10 reimbursement methodology was actually set. So 11 the way it would work would be that Colorado 12 Medicaid would come up with a reimbursement 13 methodology and submit what's called a state plan 14 to the Medicaid agency that runs the Medicaid 15 program, which was call -- which was called HCFA, 16 right?</p> <p>17 A. You're -- the Medicaid's methodology 18 was outlined in the state plan, yes.</p> <p>19 Q. And the methodology -- well, strike 20 that. Colorado Medicaid could only use that 21 methodology if HCFA approved the state plan, 22 right?</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. And drug manufacturers were not 3 involved in setting the reimbursement 4 methodology, right?</p> <p>5 A. Drug manufacturers had their own 6 lobbyists and their own organization that -- that 7 were interested in that because of the 8 reimbursement for their drugs.</p> <p>9 Q. But they didn't set the reimbursement 10 methodology in the state plan, right?</p> <p>11 A. The Medicaid program did that.</p> <p>12 Q. And the drug manufacturers didn't have 13 any power to approve or disapprove of the state 14 plan, right?</p> <p>15 A. Correct.</p> <p>16 Q. That was the Colorado Medicaid agency 17 and the federal Medicaid agency called HCFA, 18 right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. If a pharmacy chooses to 21 voluntarily participate in the Medicaid program, 22 it must enter into a provider agreement with the</p>

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<p style="text-align: right;">Page 106</p> <p>1 MR. ANDERSON: Objection, form. I --</p> <p>2 Q. (BY MR. KATZ) Take a look at that, and</p> <p>3 let me know if that's accurate.</p> <p>4 MR. ANDERSON: Cliff, I gotta tell you</p> <p>5 what's going on is beginning to become abusive</p> <p>6 because you are literally testifying in every</p> <p>7 single question.</p> <p>8 This man has no connection to this</p> <p>9 letter. He's had no connection to a 1984 report.</p> <p>10 If you have exhibits that he's involved in,</p> <p>11 perhaps you want to use those.</p> <p>12 I'm going to have questions for the</p> <p>13 guy. And at this rate, there's no way you're</p> <p>14 going to be able to pass the witness in a timely</p> <p>15 manner so that we can complete the deposition</p> <p>16 today.</p> <p>17 Q. (BY MR. KATZ) You can look at the</p> <p>18 paragraph.</p> <p>19 A. But wouldn't Medicaid drug rebates be</p> <p>20 rebates that are supplements that are</p> <p>21 subsequently paid?</p> <p>22 Q. Okay. You're right. So in the sense</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. (BY MR. KATZ) "The other" would be</p> <p>2 brand?</p> <p>3 A. Brand -- no -- the other would be</p> <p>4 brand, right, but --</p> <p>5 Q. And that was something you were aware</p> <p>6 of going back to the 1980s?</p> <p>7 A. I think that -- but I guess what I</p> <p>8 think he's -- what he was talking about in this</p> <p>9 memo was a push to try to have state MACs for</p> <p>10 generic products that the federal government did</p> <p>11 not have federal upper limits for and the basis</p> <p>12 for that.</p> <p>13 Q. And the --</p> <p>14 A. This is what he's really trying to do</p> <p>15 here.</p> <p>16 Q. And the reason for having state maximum</p> <p>17 allowable cost or federal upper limits for</p> <p>18 generic drugs is that it was known that the AWPs</p> <p>19 for generic drugs exceeded the actual acquisition</p> <p>20 costs of providers, right?</p> <p>21 A. I'm not sure that --</p> <p>22 MR. ANDERSON: Objection --</p>
<p style="text-align: right;">Page 107</p> <p>1 that rebates are paid subsequent to the</p> <p>2 transaction --</p> <p>3 A. Right, regardless of who they are</p> <p>4 paid to.</p> <p>5 Q. Right. Okay. And that was something</p> <p>6 that you were aware of in the 1980s about these</p> <p>7 rebates subsequently paid, right?</p> <p>8 A. Correct.</p> <p>9 Q. Now I would like you to take a look at</p> <p>10 the last page of this letter. And if you look at</p> <p>11 the second-to-the-last paragraph, second</p> <p>12 sentence, it says, "For multiple-source drugs, I</p> <p>13 would make extensive use of state upper limits as</p> <p>14 neither the FUL or AWP mean anything for generic</p> <p>15 drugs."</p> <p>16 Do you agree with Mr. Hazelwood's</p> <p>17 statement that the AWP does not mean anything for</p> <p>18 generic drugs?</p> <p>19 MR. ANDERSON: Objection, form.</p> <p>20 A. I guess my comment was there's probably</p> <p>21 more of a variation between AWP and actual cost</p> <p>22 with generic than there are the other.</p>	<p style="text-align: right;">Page 109</p> <p>1 A. I'm not sure that was his -- that -- in</p> <p>2 my mind, that wasn't his basis for doing that --</p> <p>3 Q. (BY MR. KATZ) Well, I'm asking you as</p> <p>4 someone who was formerly employed by Colorado --</p> <p>5 A. I thought you were asking me what he</p> <p>6 was thinking.</p> <p>7 Q. No, no, no. The reason why state</p> <p>8 maximum allowable costs were used in federal</p> <p>9 upper limits was because it was known that the</p> <p>10 AWPs for generic drugs were in -- exceeded the</p> <p>11 actual acquisition costs of providers.</p> <p>12 MR. ANDERSON: Objection, form.</p> <p>13 A. I guess I would say it is that -- the</p> <p>14 reason that one would want to do something like</p> <p>15 this is to be able to sort of fine-tune the</p> <p>16 system, to have a state -- have the states have</p> <p>17 the ability to look at their individual state and</p> <p>18 come up with methodologies that went beyond where</p> <p>19 the feds were going at that time.</p> <p>20 Q. (BY MR. KATZ) Okay. And when you say</p> <p>21 go beyond, do you mean have additional upper</p> <p>22 limits for additional drugs?</p>

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<p style="text-align: right;">Page 222</p> <p>1 don't have a number, I'm asking just for a 2 general area. I mean, was it your feeling it was 3 10 percent below or 50 percent below or 80 4 percent below? Can you give any sort of an 5 estimate?</p> <p>6 A. No.</p> <p>7 Q. While you were working for the hospital 8 -- in other words, prior to your employment with 9 Medicaid, did you have an understanding that 10 there were substantial discounts below AWP? And 11 by substantial, I mean it's not just 5 percent, 12 but there may be 20 or 30 or even 50 percent 13 below AWP?</p> <p>14 MR. ANDERSON: Objection, form.</p> <p>15 A. I guess I was -- I was aware of the 16 fact that different types of providers got 17 different pricing based on who they were, 18 nonprofit hospitals, governmental entities. And 19 I had really spent very little if no thinking 20 about what happened in the retail marketplace 21 until I got to the Medicaid program.</p> <p>22 Q. (BY MR. BERLIN) At the time that you</p>	<p style="text-align: right;">Page 224</p> <p>1 was right before the drug rebate program that 2 OBRA 90 started.</p> <p>3 And so -- and in that provision, there 4 was a provision for not effecting -- not reducing 5 reimbursement to our providers for four years. 6 And so there really wasn't much talk about 7 reimbursement during that period of time because 8 of the fact that we were preempted from doing 9 much of anything for four years.</p> <p>10 Q. And during that moratorium under OBRA, 11 did you -- during that time, did you have an 12 understanding that you, meaning the -- excuse me 13 -- the Medicaid program, was paying ingredient 14 costs to the pharmacies at higher than their 15 actual acquisition costs?</p> <p>16 MR. ANDERSON: Objection, form.</p> <p>17 A. I guess I don't -- I don't have an 18 answer to that. I don't know what our thought 19 process was at that time.</p> <p>20 The reimbursement was -- we were 21 working more on trying to get our systems updated 22 to work with the rebate program, you know, where</p>
<p style="text-align: right;">Page 223</p> <p>1 were working for the hospital, was it your view 2 that AWP was essentially a list price and that 3 there were discounts below it for different 4 providers?</p> <p>5 A. I guess to probably characterize my 6 thought of that, it was something if you looked 7 up a product in the Red Book or the Blue Book, 8 whatever it was, you saw a price there, but it 9 had no relationship to the price that we might be 10 paying in our marketplace.</p> <p>11 Q. And then when you started with Colorado 12 Medicaid, you saw that part of their formula was 13 based on AWP minus a percent, right?</p> <p>14 A. That was one of the percentages -- that 15 was one of the factors, yes.</p> <p>16 Q. Did you raise with anyone in the 17 Medicaid program a concern about using AWP as 18 part of the reimbursement formula?</p> <p>19 A. I guess not on my first day or probably 20 -- I'm sure there were discussions about that. I 21 don't recall -- you know, I think that -- to 22 point out the fact that when I got to Medicaid</p>	<p style="text-align: right;">Page 225</p> <p>1 we had to, you know, make sure that people were 2 billing by the right NDC and that type of thing. 3 And issues of AWP was not on my A pile at that 4 time.</p> <p>5 Q. (BY MR. BERLIN) So is it fair to say 6 that you knew there was a moratorium and that you 7 couldn't change reimbursement, so because of 8 that, you just didn't spend time thinking about 9 it?</p> <p>10 A. I guess what I'm saying is we -- we 11 were working on other issues at that point. But 12 that doesn't answer your question about whether I 13 thought about whether AWP was the right 14 methodology or not.</p> <p>15 It was -- it was one of the 16 methodologies we had. And it was not the one 17 that -- that paid -- I don't remember what the 18 percentages were about paying, whether it was 19 usual and customary or federal upper limit or 20 what, but it was one of the factors.</p> <p>21 Q. And I wanted to follow up on that 22 point. Do you have any recollection during any</p>

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<p style="text-align: right;">Page 334</p> <p>1 the federal definition of estimated acquisition 2 cost?</p> <p>3 MR. KATZ: Objection to form.</p> <p>4 A. To me this appears like that there was 5 a lot of negotiations with the pharmacy 6 community, with their input, and then the 7 concerns about that and . . .</p> <p>8 Q. (BY MR. ANDERSON) Yeah, like the 9 pharmacy community --</p> <p>10 A. Yeah.</p> <p>11 Q. -- was setting forth some different 12 reasons why there should be some deductions --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- correct?</p> <p>15 MR. KATZ: Objection to form.</p> <p>16 A. They were -- they were -- some 17 deductions from the percent off --</p> <p>18 Q. (BY MR. ANDERSON) Basically the 19 pharmacies --</p> <p>20 A. What they were saying is that the -- 21 that the -- when you add in the Narcotics Class 22 II, you reduce it by .131 and that type of thing.</p>	<p style="text-align: right;">Page 336</p> <p>1 MR. KATZ: Objection to form. 2 A. And what was up here is the -- the 3.8 3 percent raw to AWP differential on 3. 4 Q. (BY MR. ANDERSON) Then looking at that 5 next paragraph in Section 6, Mr. Chapman -- 6 A. Okay. 7 Q. -- do you see a paragraph there that 8 discusses the data sources used by the state of 9 Colorado Medicaid? 10 A. I see that. 11 Q. And one of those is First DataBank 12 electronic price updates, correct? 13 A. I see that, but I don't remember that - 14 - when did this letter get written? I didn't 15 remember that they had a contract with First 16 DataBank because when I arrived in July, then -- 17 then two people were still manually doing the 18 updates. But they might have just changed to 19 that. I don't know. But that was -- 20 Q. That was -- 21 A. It was short-lived. 22 Q. Yes, sir. And that's shortly after you</p>
<p style="text-align: right;">Page 335</p> <p>1 Q. And the pharmacies were saying if you 2 add in the Class II narcotics, that --</p> <p>3 A. Right.</p> <p>4 Q. -- adds a --</p> <p>5 A. Lowers it down --</p> <p>6 Q. -- little bit of --</p> <p>7 A. Yeah.</p> <p>8 Q. -- expense, right?</p> <p>9 A. Right.</p> <p>10 THE COURT REPORTER: I'm sorry. You're 11 -- so where I left off with was "And the 12 pharmacies were saying if you add in the Class II 13 narcotics . . ."</p> <p>14 Q. (BY MR. ANDERSON) -- it adds a little 15 expense; is that correct, sir?</p> <p>16 MR. KATZ: Objection to form.</p> <p>17 A. That's the .31 that was on the 18 percentage here.</p> <p>19 Q. (BY MR. ANDERSON) And that .31 20 additional cost percentage, in turn, was deducted 21 from the potential discount off of AWP in setting 22 EAC reimbursement, correct?</p>	<p style="text-align: right;">Page 337</p> <p>1 arrived --</p> <p>2 A. That's right.</p> <p>3 Q. -- at Colorado Medicaid, the transition 4 to the electronic data took place?</p> <p>5 A. That's correct.</p> <p>6 Q. Oh, one last question about this 7 Exhibit Chapman 4. In paragraph 3, there's some 8 discussion about wholesalers. Do you see that?</p> <p>9 A. I see that.</p> <p>10 Q. And did Colorado Medicaid understand 11 that pharmacies were buying some drugs from 12 wholesalers?</p> <p>13 MR. KATZ: Objection to form.</p> <p>14 A. I knew they bought drugs from whole -- 15 everybody knew that they bought drugs from 16 wholesalers, but I'm not sure what this question 17 is about.</p> <p>18 (Deposition Exhibit Chapman 005 19 was marked.)</p> <p>20 Q. (BY MR. ANDERSON) Well, that was just 21 leading me into this document, Mr. Chapman. If 22 you could, take a look at Exhibit 5.</p>